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## NOTES.

**DIVORCE—RECENT DECISIONS OF THE SUPREME COURT.**—On the fifteenth of April the Supreme Court of the United States handed down several decisions involving the interstate validity of divorces procured by constructive service of process. In two of these cases, *Bell v. Bell*, 157 N. Y., 719 (1899), and *Streichwolf v. Streichwolf*, 58 N. J. Eq., 563 (1899), the evidence clearly showed that neither party had ever acquired a *bona fide* domicile in the State in which the decree pleaded had been procured. To affirm the decisions of the State courts holding these decrees void for want of jurisdiction it was necessary only to apply the doctrine—well settled since the case of *Thompson v. Whitman*, 18 Wall., 457 (1873)—that the “Full Faith and Credit” clause of the United States Constitution does not preclude one from impeaching a judgment of another State by showing to be untrue the facts upon which the courts of that State based their jurisdiction.

In *Atherton v. Atherton*, the wife sued in New York for a limited divorce on the ground of cruelty. The husband appeared and pleaded an absolute divorce procured by constructive service in Kentucky (where he had always resided) on the ground of desertion. The New York Court found that the wife was justified in leaving her former home in Kentucky, had acquired in good faith a separate domicile in New York, and under the rule laid down in *People v. Baker*, 76 N. Y., 78 (1879), held that the decree of the Kentucky Court was invalid as to her for want of jurisdiction, since she had not been personally served and had not appeared in the suit. *Atherton v. Atherton*, 155 N. Y., 129 (1898). This decision is reversed by the Supreme Court (PECKHAM, J., and FULLER, C. J., dissenting) in an elaborate opinion by Mr. Justice GRAY, holding that due credit had not been given to the Kentucky decree. The Court does not controvert the common law rule which allows a married woman on account of ill treatment to acquire a domicile apart from her husband. After an exhaustive review of the American cases holding that where husband and wife are domiciled in different States a decree procured by constructive service of process by either is extra-territorially valid as to both, and after due reference to the opposing decisions in New York and in two other States in which it is held that such decrees, though valid as to the petitioner, are wholly ineffectual to change the matrimonial status of the non-resident, the Court declares that the principal case does not involve a determination of this perplexing question. “The authorities above cited show the wide diversity of opinion existing upon this important subject, and admonished us to confine our decision to the exact case before us.” It is submitted that the principal case

does necessitate a settlement of the problem referred to above, and that the decision is not to be supported on the ground taken by the Court.

The Court says: "The husband always had his domicile in Kentucky, and the matrimonial domicile of the parties was in Kentucky." [On this state of facts the case would be on all fours with *Cheeley v. Clayton*, 110 U. S., 701 (1884), where a husband, domiciled in Colorado, obtained a divorce there on constructive service against his wife, then in Illinois, for unjustifiably refusing to live with him].

Finding that the constructive notice required by the statutes of Kentucky was duly given, the Court declares that the decree of the Court there, granted for desertion, is binding on Mrs. Atherton, and "binding her to that full extent, it established *beyond contradiction*, that she had abandoned her husband, and precludes her from asserting that she left him on account of his cruel treatment." The Kentucky decree is binding on Mrs. Atherton if the Kentucky court had jurisdiction over her, but not otherwise, and jurisdiction in divorce proceedings is based on the domicile of the parties. The right to contradict the facts on which the courts of another State have based their jurisdiction in rendering a judgment cannot be questioned; for the Supreme Court reaffirmed this doctrine, announced in *Thompson v. Whilman*, *supra*, on the very day the opinion in the principal case was handed down. *Bell v. Bell*, *supra*. Hence, Mrs. Atherton was entitled to disprove the finding of the Kentucky tribunal to the effect that she had unjustifiably left her husband. Having established the fact of his abusive treatment, and the consequent right on her part to maintain a separate domicile, it follows that the contention of the Court that "the matrimonial domicile of the parties was in Kentucky" is wholly untenable. Nevertheless, it is upon this proposition that the Court bases its decision. The parties being domiciled in different States the question whether or not the Kentucky decree, granted on constructive service, is binding on Mrs. Atherton necessarily involved the adoption or the repudiation of the rule of the New York courts. If, in determining the jurisdiction of a court in another State to grant a decree of divorce, inquiry into the domicile of the parties may be made when it is claimed that neither person resided in that State (*Bell v. Bell*), but is refused in a case where it is admitted that the libellant was a *bona fide* resident (*Atherton v. Atherton*), the logical result is that if one party is domiciled in a State, the courts of that State have sufficient jurisdiction to determine the status of both parties—the very proposition denied in New York.

Although the Court, as quoted, expressly declines to pass upon this question, the reader has only to compare three extracts from the opinion in order to satisfy himself as to the views actually entertained by the Court of last resort. After reviewing a great number of cases representing the general law, Mr. Justice GRAY says: "In New York, North Carolina, and South Carolina, the

opposite view has prevailed, either upon the ground that the rule as to notice is the same in suits for divorce as in ordinary suits *in personam*, or upon the ground that, in the absence of actual notice or appearance, the decree, while it may release the libellant, cannot release the libelee from the bond of matrimony," citing *People v. Baker*, 76 N. Y., 78 (1879), and other cases. In the first part of the opinion, the Court, citing *Pennoyer v. Neff*, 95 U. S., 714 (1877), effectively disposes of the first contention, saying "The rule as to notice necessary to give full effect to a decree of divorce is different from that which is required in suits *in personam*"; while in another portion, the second contention is thus dismissed: "The marriage tie, when thus (lawfully) severed as to one party, ceases to bind either. A husband without a wife or a wife without a husband is unknown to the law."

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PASSENGER ELEVATORS—*RES IPSA LOQUITUR*.—The recent decision of the Court of Appeals in the case of *Griffen v. Manice*, 59 N. E., 925 (1901), New York Law Journal, March 22, 1901, raises the question of the application of the principle *res ipsa loquitur*, and of the liability of an operator of a passenger elevator. The facts were briefly these: The elevator in which the plaintiff's intestate was riding fell suddenly to the bottom of the shaft; a moment later the counter balance weights fell through the top of the elevator and instantly killed him. The Appellate Division sustained the ruling of the trial Court—that the jury might infer negligence from the accident, and that as to the appliances by which the elevator was controlled, the defendant's duty was similar to that of a common carrier. The Court of Appeals affirmed the first proposition, but held that the defendant was bound only to use a degree of care commensurate with the dangerous character of the service.

In applying the principle *res ipsa loquitur* the Court repudiates a suggestion formerly made in this State and to some extent acted upon, that it should be confined to those cases in which the relation of passenger and common carrier exists, or in which there has been an interference with the safety of a public highway. *Cosulich v. Standard Oil Co.*, 122 N. Y., 118 (1890). Undoubtedly the principle is most frequently applied to cases of railway accidents, for if it appears that the accident resulted from a defect in the vehicle or road-bed, it may be reasonably presumed that the carrier was at fault, since it is hardly conceivable that a defect can exist which extreme care aided by science and skill is incapable of detecting. *Curtis v. Ry Co.*, 18 N. Y., 534 (1859); *Seybolt v. Ry Co.*, 95 N. Y., 562 (1884). And it has been established by precedent that the falling of objects into a highway from a building, if unexplained, is *prima facie* evidence of negligence. *Byrne v. Boadle*, 2 H. & C., 722 (1863); *Mullen v. St. John*, 57 N. Y., 567 (1874). But there is no reason for limiting the principle to these cases. For it is primarily the nature of the accident which gives rise to the presumption, and the relation of the parties, or the particular place where